

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X :
BROOKLYN BOTTLING OF MILTON, :
NEW YORK, INC., : C.A. No. 07 CIV 08483 (AKH)
Plaintiff, :
: :
: :
: :
-against- : AFFIDAVIT
: :
ECUABEVERAGE, CORP. :
Defendant. :
-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

Luis Botero, being duly sworn, deposes and states under the penalty of perjury:

1. I am the Hispanic Sales Manager of North Shore Bottling Company.
2. I am not a party to the above captioned action.
3. I am not an employee of either the plaintiff or defendant, although I am employed by another beverage corporation owned by the Chief Executive Officer of Plaintiff, Eric S. Miller
4. I have not been paid to make this affidavit.
5. I am familiar with the plaintiff's beverage TROPICAL PURO SABOR NACIONAL.
6. That name goes along with a particular flavor found on beverages bottled in Ecuador.
7. Over many years I have seen beverages with the TROPICAL PURO SABOR NACIONAL tradename in numerous stores that cater to the Ecuadorian consumer market.
8. I am also familiar with the defendant's beverages.
9. On November 28, 2007, and again on January 25, 2008 I bought a bottle of beverage, a photograph of one of which is attached to and referred to by Mr. Eric Miller in his affidavit as

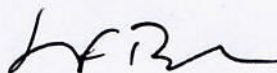
10. I bought the bottles at Food Dimensions located at 35-60 Junction Boulevard, Corona, NY 11368..

11. I recognized the bottle which included the Tropical word with the same colors and markings as the Plaintiff's.

12. Upon closer look, I saw that the beverage was bottled by Baloru, an Ecuadorian beverage bottler associated with Plaintiff and originator of the flavors which are sold under the Plaintiff's Mark.

13. I also noticed that the nutrition facts label attached to the bottle stated that the beverage was imported and distributed by Ecuabeverage.

14. Having seen the Ecuabeverage name on product that should have been labeled Brooklyn Bottling of Milton, NY., I thought it was important that I purchase a bottle and show my employer.



Luis Botero

Sworn to before me this
17 day of June, 2008


Notary Public

EDDY R. SALDANA

Notary Public, State of New York

No. 01SA6123798

Qualified in Queens County

Commission Expires March 14, 2009